IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 672 of 1999

Between:

Indala Narayanamma @ Narayana

W/o.Late Somunaidu,

Kalapaka Village, Paravada Mandal,

Visakhapatnam District.

..... PETITIONER

AND

1. The District Collector (LA),

Visakhapatnam

2. The Special Deputy Collector, Land Acquisition,

NTPC – Unit – IV,

Visakhapatnam.

3. The Mandal Revenue Officer,

Paravada Mandal, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order, or direction, more particularly one in the nature of a Writ of Mandamus, directing the respondents to refer the dispute raised by the writ petitioner claiming compensation for the scheduled lands described in the schedule to a Court, under Sections 18 and 30 of the Land Acquisition Act, declaring that the non-intimation of passing of any award if any passed by the 2nd respondent relating to

the schedule lands, and other lands acquired for the purpose of constructing M/s.Simhadri Thermal Power Station to this Writ Petition under Section 12(2) of the Land Acquisition Act, and the attempts and arrangements being made for making payment of compensation without referring the dispute to a court, ignoring the interests of the petitioner, in spite of the Telegraphic and legal notices dated 5.1.1999 is highly arbitrary, improper, contrary to law, violative of the Fundamental Rights and the principles of natural justice.

Counsel for the Petitioner:MR.D.RAMALINGA SWAMY

Counsel for the Respondents: GP FOR LAND ACQUISITION

The Court made the following :

ORDER:

The petitioner, who is widow of late Indala Somunaidu, claims that she is absolute owner of various extents of lands comprised in S.Nos.119/6, 119/8, 121/8, 121/12, 181/10, 123/11, 121/9, 121/10, 118/5 admeasuring total extent of Acs.1.30 situated in Block-II of Kalapaka Village, Paravada Mandal, Visakhapatnam District. The land was acquired for establishment of Thermal Power Plant by National Thermal Power Corporation in 1998. The petitioner appeared in the award enquiry and claimed compensation payable for Acs.1.30. She also issued a notice on 7.11.1998 to the Land Acquisition Officer, second respondent herein. By communication dt.11.12.1998 second respondent directed the petitioner to appear before the enquiry on 16.12.1998. The petitioner alleges that on 16.12.1998 second respondent obtained thumb impression of petitioner on empty papers and informed her to come for yet another enquiry later. In the meanwhile, petitioner came to know that the second respondent took a decision to pay compensation to one Indala Varahalamma, who is none other than daughter-in-law of the petitioner. The petitioner therefore issued a telegram on 5.1.1999 as well as legal notice through her counsel calling upon the second respondent to stop payment to Indala Varahalamma and refer the matter under Section 30 of the Land Acquisition Act, 1894, (for short, the Act), in vain. Therefore, she filed the Writ Petition.

It is submitted that petitioner sent a notice on 7.11.1998 and that she was asked to appear before enquiry with relevant records. It is stated that the petitioner appeared before second respondent on 16.12.1998 for enquiry. At that time second respondent obtained signatures of petitioner on empty papers, on which a statement was made to the effect that there is dispute between herself and other heirs in respect of the land admeasuring Acs.0.50 comprised in S.Nos.121/8, 121/12, 181/6 and 181/10 that same was settled before village elders and that compensation may be apportioned among all of them in equal shares. Based on such statement, an amount of Rs.28,125/- (Rupees twenty eight thousand one hundred and twenty five only) was awarded to Indala Varahalamma, daughter-in-law of petitioner.

In the counter affidavit various allegations made by petitioner are denied. But, allegation that petitioner issued a telegram and legal notice on 5.1.1999 has not been denied. Learned Government Pleader has produced the record of Land Acquisition for Simhadri Thermal Power Project, Volume 17/19 (Pg. Nos.6831 to 7171) in RC No.15/98, R.I.-I, of Kalapaka Village, Parawada Mandal, Block-II, from the office of Special Deputy Collector, NTPC Unit-IV, relating to Award No.6 of 1998. The statement allegedly given by M/s.Indala Kondaiah, Indala Kannam Naidu, Indala Tatalu, Indala Kanakayya, Indala Narayanamma, Indala Varalamma, Attam Meeralu and Gorle Appa Rao is at page numbers 6975 to 6977. The statement is witnessed by Indala Varahalamma and Elubilli Babu Rao. Learned counsel for the petitioner, Sri D.Ramalinga Swamy, after perusing the said statement rightly submits that the names of Indala Narayanamma (petitioner), Indala Varahalamma, Attam Meeralu and Gorle Appa Rao were subsequently extrapolated in preambular portion of the statement.

There are un-explained intrinsic incongruities in the statement. Further, at page No.6979, the statement of petitioner allegedly recorded on 16.12.1998 is also found which says that petitioner is not at all concerned with the lands in S.No.121/8, 121/12, 181/10 and 180/6. Learned counsel for the petitioner points out that on balance of probabilities the statement at page No.6979 of the file cannot be said to have been given by petitioner. I see force in the submission. However, I hasten to add that these are only *prima facie* observations and the matter requires further probe and the persons, who allegedly gave such statements have to be confronted with the statements in appropriate trial before civil Court.

As the second respondent has not denied the receipt of telegram, and legal notice dt.5.1.1999, it stands to reason that even if the petitioner allegedly gave a statement giving up her rights, nothing prevents her to resile from the statement and request the Mandal Revenue Officer to refer the dispute to Civil Court. Secondly, the statement at page Nos.6975 to 6977 deals with only an extent of Acs.0.50 in S.Nos.121/8, 121/12, 181/10 and 181/6 and whereas the petitioner claims ownership in respect of Acs.1.30 in S.Nos.121/8, 121/12, and 181/10 apart from other survey numbers to which a reference has already been made earlier. When there is a genuine dispute regarding title to the property acquired, it is incumbent on the part of second respondent to refer the dispute and adjudicate the matter.

After perusing the pleadings, as well as original records produced before me and hearing the learned counsel for the petitioner and learned Assistant Government Pleader for Land Acquisition, I am convinced that this is a fit case where second respondent ought to have referred the matter under Section 30 of the Act to Civil Court. Second respondent failed to discharge statutory duty cast upon him and therefore, a *Mandamus* shall issue directing the second respondent to forthwith refer the dispute between petitioner and her daughter-in-law in regard to compensation awarded to the lands claimed by petitioner. As and when such reference is made, concerned Court of Senior Civil Judge, shall dispose of the reference within a period of six months after receiving reference. It is made clear that amount already paid to Varahalamma shall be subject to orders that may be passed by the Civil Court.

The Writ Petition subject to above observations is allowed. No costs.

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(V.V.S.RAO, J)

21.7.2004

bnr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Collector, (Land Acquisition),

Visakhapatnam.

2. The Special Deputy Collector, Land Acquisition,

NTPC – Unit – IV,

Visakhapatnam.

3. The Mandal Revenue Officer,

Paravada Mandal, Visakhapatnam District.

4. 2CCs to GP for Land Acquisition, High Court Bldgs., Hyderabad (OUT)

5. 2CD copies